

109TH CONGRESS  
2D SESSION

# H. R. 4660

To provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2006

Mr. ALLEN (for himself, Mr. BROWN of Ohio, Mr. BERRY, Mr. ROSS, Mr. MICHAUD, Mr. STRICKLAND, and Mr. WYNN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Requiring Emergency Pharmaceutical Access for Indi-  
6 vidual Relief (REPAIR) Act of 2006”.

7 (b) TABLE OF CONTENTS.—The table of contents of  
8 this Act is as follows:

- Sec. 1. Short title; table of contents
- Sec. 2. Transition requirements
- Sec. 3. Federal fallback for full-benefit dual eligible individuals for 2006
- Sec. 4. Identifying full-benefit dual eligible individuals in data records
- Sec. 5. Prohibition on conditioning Medicaid eligibility for individuals enrolled in certain creditable prescription drug coverage on enrollment in the Medicare part D drug program
- Sec. 6. Ensuring that full-benefit dual eligible individuals are not overcharged
- Sec. 7. Reimbursement of States for 2006 transition costs
- Sec. 8. Facilitation of identification and enrollment through pharmacies of full-benefit dual eligible individuals in the Medicare part D drug program
- Sec. 9. State health insurance program assistance regarding the new Medicare prescription drug benefit
- Sec. 10. Additional Medicare part D informational resources
- Sec. 11. GAO study and report on the imposition of co-payments under part D for full-benefit dual eligible individuals residing in a long-term care facility
- Sec. 12. State coverage of non-formulary prescription drugs for full-benefit dual eligible individuals during 2006
- Sec. 13. Protection for full-benefit dual eligible individuals from plan termination prior to receiving functioning access in a new part D plan

## 1 **SEC. 2. TRANSITION REQUIREMENTS.**

### 2 (a) REQUIREMENTS.—

3 (1) IN GENERAL.—Section 1860D–4(b) of the  
 4 Social Security Act (42 U.S.C. 1395w–104(b)) is  
 5 amended by adding at the end the following new  
 6 paragraphs:

7 “(4) TRANSITION PERIOD FOR DRUG COV-  
 8 ERAGE.—

9 “(A) IN GENERAL.—In the case of an indi-  
 10 vidual who has made an election to enroll (or to  
 11 change such an election) in a prescription drug  
 12 plan under this part (or an MA–PD plan under  
 13 part C) and who as of the effective date of such  
 14 election (or change) has a prescription for a

1 drug that a physician has determined necessary  
2 to stabilize such individual on a course of treat-  
3 ment, if such prescription would expire within  
4 the 30-day period beginning on the day after  
5 such effective date, the PDP sponsor of the  
6 plan shall provide at least a 30-day supply of  
7 such drug at the dosage previously prescribed  
8 by a physician without imposing any prior au-  
9 thorization requirements or other access restric-  
10 tions for such individual.

11 “(B) APPLICATION TO LONG-TERM CARE  
12 SETTING.—In the case of an individual de-  
13 scribed in subparagraph (A) who is residing in  
14 a long-term care setting as of the effective date  
15 described in such subparagraph, any reference  
16 to a 30-day period or 30-day supply shall be  
17 deemed a reference to a 90-day period or a 90-  
18 day supply, respectively.

19 “(5) CUSTOMER SERVICE.—The sponsor of a  
20 prescription drug plan under this part (or an MA-  
21 PD plan under part C) shall provide—

22 “(A) accessible and trained customer serv-  
23 ice representatives available for full business  
24 hours from coast to coast to provide knowledge-  
25 able assistance to individuals seeking help with

1 Medicare part D including, beneficiaries, case-  
2 workers, SCHIP counselors, pharmacists, doc-  
3 tors, and caregivers;

4 “(B) at least one dedicated phone line for  
5 pharmacists with sufficient staff to reduce wait  
6 times for pharmacists seeking Medicare part D  
7 assistance to no more than 20 minutes; and

8 “(C) sufficient staff to reduce wait times  
9 for all Medicare part D-related calls to plan  
10 phone lines to no more than 20 minutes.”.

11 (2) APPLICATION.—The requirements under  
12 paragraphs (4) and (5) of section 1860D–4(b) of the  
13 Social Security Act (42 U.S.C. 1395w–104(b)), as  
14 added by subsection (a), shall apply to the plan serv-  
15 ing as the national point of sale contractor under  
16 part D of title XVIII of such Act.

17 (b) ENFORCEMENT.—The Secretary may impose a  
18 civil monetary penalty in an amount not to exceed \$15,000  
19 for conduct that a sponsor of a prescription drug plan or  
20 an organization offering an MA–PD plan knows or should  
21 know is a violation of the provisions of paragraph (4) or  
22 (5) of section 1860D–4(b) of the Social Security Act (42  
23 U.S.C. 1395w–104(b)), as added by subsection (a). The  
24 provisions of section 1128A of the Social Security Act (42  
25 U.S.C. a–7a), other than subsections (a) and (b) and the

1 second sentence of subsection (f), shall apply to a civil  
2 monetary penalty under the previous sentence in the same  
3 manner as such provisions apply to a penalty or pro-  
4 ceeding under subsection (a) of such section 1128A(a).

5 **SEC. 3. FEDERAL FALLBACK FOR FULL-BENEFIT DUAL ELI-**  
6 **GIBLE INDIVIDUALS FOR 2006.**

7 (a) IN GENERAL.—

8 (1) IN GENERAL.—If a full-benefit dual eligible  
9 individual (as defined in section 1935(c)(6) of the  
10 Social Security Act (42 U.S.C. 1396u–5(c)(6))), or  
11 an individual who is presumed to be such an indi-  
12 vidual pursuant to subsection (b), presents a pre-  
13 scription for a covered part D drug (as defined in  
14 section 1860D–2(e) of such Act (42 U.S.C. 1395w–  
15 102(e))) at a pharmacy in 2006 and the pharmacy  
16 is unable to locate or verify the individual’s enroll-  
17 ment through a reasonable effort, including the use  
18 of the pharmacy billing system or by calling an offi-  
19 cial Medicare hotline, or to bill for the prescription  
20 through the plan serving as the national point of  
21 sale contractor, the pharmacy may provide a 30-day  
22 supply of the drug to the individual.

23 (2) REFILL.—The pharmacy may provide an  
24 additional 30-day supply of a drug if the pharmacy  
25 continues to be unable to locate the individual’s en-

1 rollment through such reasonable efforts or to bill  
2 for the prescription through the plan serving as the  
3 national point of sale contractor when a prescription  
4 is presented on or after the date that a prescription  
5 refill is appropriate, but in no case after December  
6 31, 2006.

7 (3) COST-SHARING.—The cost-sharing for a  
8 prescription filled pursuant to this subsection shall  
9 be cost-sharing provided for under section 1860D–  
10 14(a) of the Social Security Act (42 U.S.C. 1395w–  
11 114(a)).

12 (b) PRESUMPTIVE ELIGIBILITY.—An individual shall  
13 be presumed to be a full-benefit dual eligible individual  
14 (as so defined) if the individual presents at the pharmacy  
15 with—

16 (1) a government issued picture identification  
17 card;

18 (2) reliable evidence of Medicaid enrollment,  
19 such as a Medicaid card, recent history of Medicaid  
20 billing in the pharmacy patient profile, or a copy of  
21 a current Medicaid award letter; and

22 (3) reliable evidence of Medicare enrollment,  
23 such as a Medicare identification card, a Medicare  
24 enrollment approval letter, a Medicare Summary No-

1       tice, or confirmation from an official Medicare hot-  
2       line.

3       (c) PAYMENTS TO PHARMACISTS.—

4           (1) IN GENERAL.—The Secretary of Health and  
5       Human Services shall reimburse pharmacists, to the  
6       extent that such pharmacists are not otherwise reim-  
7       bursed by States or plans, for the costs incurred in  
8       complying with the requirements under subsection  
9       (a), including acquisition costs, dispensing costs, and  
10      other overhead costs. Such payments shall be made  
11      in a timely manner from the Medicare Prescription  
12      Drug Account under section 1860D–16 of the Social  
13      Security Act (42 U.S.C. 1395w–116) and shall be  
14      deemed to be payments from such Account under  
15      subsection (b) of such section.

16           (2) RETROACTIVE APPLICATION TO BEGINNING  
17      OF 2006.—The costs incurred by a pharmacy which  
18      may be reimbursed under paragraph (1) shall in-  
19      clude costs incurred during the period beginning on  
20      January 1, 2006, and before the date of enactment  
21      of this Act.

22       (d) RECOVERY OF COSTS FROM PLANS BY SEC-  
23      RETARY NOT PHARMACIES.—The Secretary of Health and  
24      Human Services shall establish a process for recovering  
25      the costs described in subsection (c)(1) from prescription

1 drug plans (as defined in section 1860D–1(a)(3)(C) of the  
 2 Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and  
 3 MA–PD plans (as defined in section 1860D–41(a)(14) of  
 4 such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary  
 5 determines that such plans should have incurred such  
 6 costs. Amounts recovered pursuant to the preceding sen-  
 7 tence shall be deposited in the Medicare Prescription Drug  
 8 Account described in subsection (c)(1).

9 **SEC. 4. IDENTIFYING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN DATA RECORDS.**  
 10

11 (a) IN GENERAL.—The Secretary of Health and  
 12 Human Services and a prescription drug plan or an MA–  
 13 PD plan shall clearly identify all full-benefit dual eligible  
 14 individuals (as defined in section 1935(c)(6) of the Social  
 15 Security Act (42 U.S.C. 1396u–5(c)(6))) and reflect the  
 16 low-income subsidy status of such individual for each cal-  
 17 ender year (beginning with 2006) in every data record file  
 18 used to enroll or adjudicate claims for such individuals.

19 (b) ENROLLMENT.—For each calendar year (begin-  
 20 ning with 2006) and for each Medicaid beneficiary who  
 21 is a full-benefit dual eligible individual (as so defined), the  
 22 Secretary of Health and Human Services shall—

23 (1) identify in the Medicare enrollment data-  
 24 base that such individual has dual eligible status



1 that has been verified with a State, including the  
 2 District of Columbia; and

3 (2) ensure that such dual eligible status is re-  
 4 flected in each data file necessary to ensure that  
 5 such status is transmitted to a prescription drug  
 6 plan or an MA–PD plan when the Secretary certifies  
 7 the enrollment of such an individual in a plan.

8 (c) DEFINITION OF MA–PD PLAN AND PRESCRIP-  
 9 TION DRUG PLAN.—For purposes of this section, the  
 10 terms “MA–PD plan” and “prescription drug plan” have  
 11 the meaning given such terms in sections 1860D–  
 12 1(a)(3)(C) and 1860D–41(a)(14) of the Social Security  
 13 Act (42 U.S.C. 1395w–101(a)(3)(C); 1395w–151(a)(14)),  
 14 respectively.

15 **SEC. 5. PROHIBITION ON CONDITIONING MEDICAID ELIGI-**  
 16 **BILITY FOR INDIVIDUALS ENROLLED IN CER-**  
 17 **TAIN CREDITABLE PRESCRIPTION DRUG**  
 18 **COVERAGE ON ENROLLMENT IN THE MEDI-**  
 19 **CARE PART D DRUG PROGRAM.**

20 (a) IN GENERAL.—Section 1935 of the Social Secu-  
 21 rity Act (42 U.S.C. 1396v) is amended by adding at the  
 22 end the following:

23 “(f) PROHIBITION ON CONDITIONING ELIGIBILITY  
 24 FOR MEDICAL ASSISTANCE FOR INDIVIDUALS ENROLLED  
 25 IN CERTAIN CREDITABLE PRESCRIPTION DRUG COV-

1 ERAGE ON ENROLLMENT IN MEDICARE PRESCRIPTION  
2 DRUG BENEFIT.—

3 “(1) IN GENERAL.—A State shall not condition  
4 eligibility for medical assistance under the State  
5 plan for a part D eligible individual (as defined in  
6 section 1860D–1(a)(3)(A)) who is enrolled in cred-  
7 itable prescription drug coverage described in any of  
8 subparagraphs (C) through (H) of section 1860D–  
9 13(b)(4) on the individual’s enrollment in a prescrip-  
10 tion drug plan under part D of title XVIII or an  
11 MA–PD plan under part C of such title.

12 “(2) COORDINATION OF BENEFITS WITH PART  
13 D FOR OTHER INDIVIDUALS.—Nothing in this sub-  
14 section shall be construed as prohibiting a State  
15 from coordinating medical assistance under the  
16 State plan with benefits under part D of title XVIII  
17 for individuals not described in paragraph (1).”.

18 (b) NULLIFICATION OF STATE PLAN AMENDMENTS,  
19 REDETERMINATION OF ELIGIBILITY.—In the case of a  
20 State that, as of the date of enactment of this Act, has  
21 an approved amendment to its State plan under title XIX  
22 of the Social Security Act with a provision that conflicts  
23 with section 1935(f) of such Act (as added by subsection  
24 (a)), such provision is, as of such date of enactment, null  
25 and void. The State shall redetermine any applications for

1 medical assistance that have been denied solely on the  
2 basis of the application of such a State plan amendment  
3 not later than 90 days after the date of enactment of this  
4 Act.

5 **SEC. 6. ENSURING THAT FULL-BENEFIT DUAL ELIGIBLE IN-**  
6 **DIVIDUALS ARE NOT OVERCHARGED.**

7 (a) IN GENERAL.—Section 1860D–14 of the Social  
8 Security Act (42 U.S.C. 1395w–114) is amended—

9 (1) by redesignating subsection (d) as sub-  
10 section (e); and

11 (2) by inserting after subsection (c) the fol-  
12 lowing new subsection:

13 “(d) ENSURING FULL-BENEFIT DUAL ELIGIBLE IN-  
14 DIVIDUALS ARE NOT OVERCHARGED.—

15 “(1) IN GENERAL.—The Secretary shall, as  
16 soon a possible after the date of enactment of this  
17 subsection, establish processes for the following:

18 “(A) TRACKING INAPPROPRIATE PAY-  
19 MENTS.—The Secretary shall track full-benefit  
20 dual eligible individuals enrolled in a prescrip-  
21 tion drug plan or an MA–PD plan to determine  
22 whether such individuals were inappropriately  
23 subject under the plan to a deductible or cost-  
24 sharing that is greater than is required under  
25 section 1860D–14.

1           “(B) REDUCTION IN PAYMENTS TO PLANS  
2           AND REFUNDS TO INDIVIDUALS.—If the Sec-  
3           retary determines under subparagraph (A) that  
4           an individual was overcharged, the Secretary  
5           shall—

6                   “(i) reduce payments to the sponsor  
7                   of the prescription drug plan under section  
8                   1860D–15 or to the organization offering  
9                   the MA–PD plan under section 1853 that  
10                  inappropriately charged the individual by  
11                  an amount equal to the inappropriate  
12                  charges; and

13                   “(ii) refund such amount to the indi-  
14                  vidual within 60 days of the determination  
15                  that the individual was inappropriately  
16                  charged.

17           If the Secretary does not provide for the refund  
18           under clause (i) within the 60 days provided for  
19           under such clause, interest at the rate estab-  
20           lished under section 6621(a)(1) of the Internal  
21           Revenue Code of 1986 shall be payable from  
22           the end of such 60-day period until the date of  
23           the refund.

24           “(2) REQUIREMENT.—The processes estab-  
25           lished under paragraph (1) shall provide for the abil-

1       ity of an individual to notify the Secretary if the in-  
 2       dividual believes that they were inappropriately sub-  
 3       ject under the plan to a deductible or cost-sharing  
 4       that is greater than is required under section  
 5       1860D–14.”.

6       (b) REPORT TO CONGRESS.—Not later than January  
 7   1, 2007, the Secretary of Health and Human Services  
 8   shall submit a report to Congress on the implementation  
 9   of the processes established under subsection (d) of section  
 10  1860D–14 of the Social Security Act (42 U.S.C. 1395w–  
 11  114), as added by subsection (a).

12 **SEC. 7. REIMBURSEMENT OF STATES FOR 2006 TRANSITION**  
 13 **COSTS.**

14       (a) REIMBURSEMENT.—

15           (1) IN GENERAL.—Notwithstanding section  
 16   1935(d) of the Social Security Act (42 U.S.C.  
 17   1396u–5(d) or any other provision of law, the Sec-  
 18   retary of Health and Human Services shall reim-  
 19   burse States for 100 percent of the costs incurred by  
 20   the State during 2006 for covered part D drugs (as  
 21   defined in section 1860D–2(e) of such Act (42  
 22   U.S.C. 1395w–102(e))) for part D eligible individ-  
 23   uals (as defined in section 1860D–1(a)(3)(A) of the  
 24   Social Security Act (42 U.S.C. 1394w–  
 25   101(a)(3)(A))) which the State reasonably expected

1 would have been covered under such part but were  
2 not because the individual was unable to access on  
3 a timely basis prescription drug benefits to which  
4 they were entitled under such part. Such payments  
5 shall be made from the Medicare Prescription Drug  
6 Account under section 1860D–16 of the Social Secu-  
7 rity Act (42 U.S.C. 1395w–116) and shall be  
8 deemed to be payments from such Account under  
9 subsection (b) of such section.

10 (2) RETROACTIVE APPLICATION TO BEGINNING  
11 OF 2006.—The costs incurred by a State which may  
12 be reimbursed under paragraph (1) shall include  
13 costs incurred during the period beginning on Janu-  
14 ary 1, 2006, and before the date of enactment of  
15 this Act.

16 (b) RECOVERY OF COSTS FROM PLANS BY SEC-  
17 RETARY NOT STATES.—The Secretary of Health and  
18 Human Services shall establish a process for recovering  
19 the costs described in subsection (a)(1) from prescription  
20 drug plans (as defined in section 1860D–1(a)(3)(C) of the  
21 Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and  
22 MA–PD plans (as defined in section 1860D–41(a)(14) of  
23 such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary  
24 determines that such plans should have incurred such  
25 costs. Amounts recovered pursuant to the preceding sen-

1 tence shall be deposited in the Medicare Prescription Drug  
2 Account described in subsection (a)(1).

3 (c) STATE.—For purposes of this section, the term  
4 “State” includes the District of Columbia.

5 **SEC. 8. FACILITATION OF IDENTIFICATION AND ENROLL-**  
6 **MENT THROUGH PHARMACIES OF FULL-BEN-**  
7 **EFIT DUAL ELIGIBLE INDIVIDUALS IN THE**  
8 **MEDICARE PART D DRUG PROGRAM.**

9 (a) IN GENERAL.—The Secretary of Health and  
10 Human Services shall provide for outreach and education  
11 to every pharmacy that has participated in the Medicaid  
12 program under title XIX of the Social Security Act, par-  
13 ticularly independent pharmacies, on the following:

14 (1) The needs of full-benefit dual eligible indi-  
15 viduals and the challenges of meeting those needs.

16 (2) The processes for the transition from Med-  
17 icaid prescription drug coverage to coverage under  
18 such part D for such individuals.

19 (3) The processes established by the Secretary  
20 to facilitate, at point of sale, identification of drug  
21 plan assignment of such population or enrollment of  
22 previously unidentified or new full-benefit dual eligi-  
23 ble individuals into Medicare part D prescription  
24 drug coverage, including how pharmacies can use  
25 such processes to help ensure that such population

1 makes a successful transition to Medicare part D  
2 without a lapse in prescription drug coverage.

3 (b) HOLDING PHARMACIES HARMLESS FOR CERTAIN  
4 COSTS.—

5 (1) IN GENERAL.—The Secretary of Health and  
6 Human Services shall provide for such payments to  
7 pharmacies as may be necessary to reimburse phar-  
8 macies fully for—

9 (A) transaction fees associated with the  
10 point-of-sale facilitated identification and enroll-  
11 ment processes referred to in subsection (a)(3);  
12 and

13 (B) costs associated with technology or  
14 software upgrades necessary to make any iden-  
15 tification and enrollment inquiries as part of  
16 the processes under subsection (a)(3).

17 (2) TIME.—Payments under paragraph (1)  
18 shall be made with respect to fees and costs incurred  
19 during the period beginning on December 1, 2005,  
20 and ending on June 1, 2006.

21 (3) PAYMENTS FROM ACCOUNT.—Payments  
22 under paragraph (1) shall be made from the Medi-  
23 care Prescription Drug Account under section  
24 1860D–16 of the Social Security Act (42 U.S.C.  
25 1395w–116) and shall be deemed to be payments



1 from such Account under subsection (b) of such sec-  
2 tion.

3 **SEC. 9. STATE HEALTH INSURANCE PROGRAM ASSISTANCE**  
4 **REGARDING THE NEW MEDICARE PRESCRIP-**  
5 **TION DRUG BENEFIT.**

6 During the period beginning on the date that is 7  
7 days after the date of enactment of this Act and ending  
8 on May 15, 2006 (or a later date if determined appro-  
9 priate by the Secretary of Health and Human Services),  
10 the Secretary shall ensure that an employee of the Centers  
11 for Medicare & Medicaid Services is stationed at each  
12 State health insurance counseling program (receiving  
13 funding under section 4360 of the Omnibus Budget Rec-  
14 onciliation Act of 1990) in order to—

15 (1) assist Medicare beneficiaries and counselors  
16 under such program in better understanding the  
17 Medicare prescription drug benefit under part D of  
18 title XVIII of the Social Security Act; and

19 (2) act as a liaison to the Secretary and the Ad-  
20 ministrator of the Centers for Medicare & Medicaid  
21 Services regarding issues related to oversight and  
22 enforcement of provisions under the Medicare pre-  
23 scription drug benefit.

1 **SEC. 10. ADDITIONAL MEDICARE PART D INFORMATIONAL**  
2 **RESOURCES.**

3 (a) 1-800-MEDICARE.—The Secretary of Health  
4 and Human Services shall increase the number of trained  
5 employees staffing the toll-free telephone number 1-800-  
6 MEDICARE in order to ensure that the average wait time  
7 for a caller does not exceed 20 minutes.

8 (b) PHARMACY HOTLINE.—The Secretary of Health  
9 and Human Services shall—

10 (1) establish a toll-free telephone number that  
11 is dedicated to providing information regarding the  
12 Medicare prescription drug benefit under title XVIII  
13 of the Social Security Act to pharmacists; and

14 (2) staff such telephone number in order to en-  
15 sure that the average wait time for a caller does not  
16 exceed 20 minutes.

17 (c) STATE HEALTH INSURANCE PROGRAM HOT-  
18 LINE.—The Secretary of Health and Human Services  
19 shall—

20 (1) establish a toll-free telephone number that  
21 is dedicated to providing information regarding the  
22 Medicare prescription drug benefit under title XVIII  
23 of the Social Security Act to counselors working in  
24 State health insurance counseling programs (receiv-  
25 ing funding under section 4360 of the Omnibus  
26 Budget Reconciliation Act of 1990); and

1           (2) staff such telephone number in order to en-  
2           sure that the average wait time for a caller does not  
3           exceed 20 minutes.

4 **SEC. 11. GAO STUDY AND REPORT ON THE IMPOSITION OF**  
5 **CO-PAYMENTS UNDER PART D FOR FULL-**  
6 **BENEFIT DUAL ELIGIBLE INDIVIDUALS RE-**  
7 **SIDING IN A LONG-TERM CARE FACILITY.**

8           (a) STUDY.—The Comptroller General of the United  
9 States shall conduct a study on how mental health pa-  
10 tients who are full-benefit dual eligible individuals (as de-  
11 fined in section 1935(c)(6) of the Social Security Act (42  
12 U.S.C. 1396u–5(c)(6))) and who reside in long-term care  
13 facilities, including licensed assisted living facilities, will  
14 be affected by the imposition of co-payments for covered  
15 part D drugs under part D of title XVIII of such Act.  
16 Such study shall include a review of issues that relate to  
17 the potential harm of displacement due to an inability to  
18 access needed medications because of such co-payments.

19           (b) REPORT.—Not later than 6 months after the date  
20 of enactment of this Act, the Comptroller General of the  
21 United States shall submit a report to Congress on the  
22 study conducted under subsection (a), including rec-  
23 ommendations for such legislation as the Comptroller Gen-  
24 eral determines is appropriate.

1 **SEC. 12. STATE COVERAGE OF NON-FORMULARY PRESCRIP-**  
2 **TION DRUGS FOR FULL-BENEFIT DUAL ELIGI-**  
3 **BLE INDIVIDUALS DURING 2006.**

4 (a) STATE COVERAGE OF NON-FORMULARY PRE-  
5 SCRIPTON DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE  
6 INDIVIDUALS DURING 2006.—For prescriptions filled  
7 during 2006, notwithstanding section 1935(d) of the So-  
8 cial Security Act (42 U.S.C. 1396v(d)), a State (as de-  
9 fined for purposes of title XIX of such Act) may provide  
10 (and receive Federal financial participation for) medical  
11 assistance under such title with respect to prescription  
12 drugs provided to a full-benefit dual eligible individual (as  
13 defined in section 1935(c)(6) of such Act (42 U.S.C.  
14 1396v(c)(6)) that are not on the formulary of the prescrip-  
15 tion drug plan under part D or the MA–PD plan under  
16 part C of title XVIII of such Act in which such individual  
17 is enrolled.

18 (b) APPLICATION.—

19 (1) MEDICARE AS PRIMARY PAYER.—Nothing in  
20 subsection (a) shall be construed as changing or af-  
21 fecting the primary payer status of a prescription  
22 drug plan under part D or an MA–PD plan under  
23 part C of title XVIII of the Social Security Act with  
24 respect to prescription drugs furnished to any full-  
25 benefit dual eligible individual (as defined in section

1       1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) dur-  
2       ing 2006.

3           (2) THIRD PARTY LIABILITY.—Nothing in sub-  
4       section (a) shall be construed as limiting the author-  
5       ity or responsibility of a State under section  
6       1902(a)(25) of the Social Security Act (42 U.S.C.  
7       1396a(a)(25)) to seek reimbursement from a pre-  
8       scription drug plan, an MA–PD plan, or any other  
9       third party, of the costs incurred by the State in  
10      providing prescription drug coverage during 2006.

11 **SEC. 13. PROTECTION FOR FULL-BENEFIT DUAL ELIGIBLE**  
12                   **INDIVIDUALS FROM PLAN TERMINATION**  
13                   **PRIOR TO RECEIVING FUNCTIONING ACCESS**  
14                   **IN A NEW PART D PLAN.**

15       (a) IN GENERAL.—Notwithstanding any other provi-  
16      sion of law, the Secretary of Health and Human Services  
17      shall not terminate coverage of a full-benefit dual eligible  
18      individual (as defined in section 1935(c)(6) of the Social  
19      Security Act (42 U.S.C. 1396v(c)(6)) unless such indi-  
20      vidual has functioning access to a prescription drug plan  
21      under part D or an MA–PD plan under part C of title  
22      XVIII of such Act. Such access shall include entry of the  
23      individual into the computer system of such plan and an  
24      acknowledgment by the plan that the individual is eligible

1 for a full premium subsidy under section 1860D–14 of  
2 such Act (42 U.S.C. 1395w–114).

3 (b) EFFECTIVE DATE.—This section shall take effect  
4 on the date of the enactment of this Act.

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